



February 29, 2000

Ms. Mary D. Marquez
Assistant to Chief Counsel
Capital Metropolitan Transportation Authority
99 East Fifth Street
Austin, Texas 78702

OR2000-0762

Dear Ms. Marquez :

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132577.

The Capital Metropolitan Transportation Authority (the "authority") received a request for all memos, drafts, notes, e-mail, and documents pertaining to (1) the original contract with Longhorn Railroad; (2) the updated or amended contract with Longhorn Railroad; (3) Capitol Metro's May 1998 purchase of the Giddings-to-Llano railroad; 4) continued operation of the Giddings-to-Llano railroad by Capital Metro and by Longhorn Railroad and its use by the Austin Steam Train Association; and (5) Capitol Metro's total financial involvement and expenditures on the Giddings-to-Llano railroad and to Longhorn Railroad.

You indicate that you have released some of the responsive information, including the information responsive to item 3 of the request, but seek to withhold information which you claim is excepted from disclosure under sections 552. 103 and 552.111 of the Government Code. You have submitted a representative sample of the types of information you seek to withhold.¹ As section 552.103 of the Government Code disposes of this request, we limit this decision to discussion of that exception.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c).

You note that the authority received an earlier request for related information, which we addressed in Open Records Letter No. 99-3724 (1999). In that decision we ruled that litigation over contract terms between the authority and Long Horn Railroad was reasonably anticipated. From our review of the materials submitted as responsive to the current request for information, we conclude that this information is related to that anticipated litigation. Most of the responsive information may therefore be withheld under section 552.103(a) of the Government Code.

However, 552.103(a) does not except all of the submitted information from disclosure. Absent special circumstances, where the opposing party to the anticipated litigation has had access to the records at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a). Therefore, those items which the opposing party in litigation has had access to are not excepted from disclosure by Government Code section 552.103. Also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

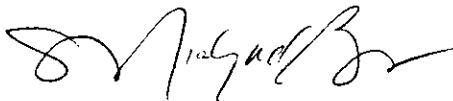
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 132577

Encl Submitted documents

cc: Mr. Kelly Daniel
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(w/o enclosures)